

**DEC 23 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MARK SHEW FI CHIN,

Petitioner - Appellant,

v.

TOM L. CAREY, Warden,

Respondent - Appellee.

No. 05-15187

D.C. No. CV-04-01258-CRB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, District Judge, Presiding

Argued and Submitted December 5, 2005  
San Francisco, California

Before: TROTT, T.G. NELSON, and PAEZ, Circuit Judges.

Mark Shew Fei Chin appeals the denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Chin was convicted of second degree murder

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

with an arming allegation and was sentenced to 19 years to life in prison. This court has jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Chin's federal habeas petition was filed on March 30, 2004, and is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA). *See Lindh v. Murphy*, 521 U.S. 320, 326-327, 117 S.Ct. 2059, 2063 (1997). Chin's petition is based on the claim that the exclusion of Chinese-Americans, Hispanic-Americans, and Filipino-Americans from service as foreperson over a 36-year period, including the grand jury that indicted him, violated his right to equal protection under the Fourteenth Amendment.

Chin presented this argument before the California Superior Court in a motion to quash his indictment. After an extensive 11-day evidentiary hearing, the superior court concluded that Chin established a prima facie showing of purposeful discrimination, but that the State adequately rebutted that presumption by demonstrating that race-neutral selection criteria had been employed to select grand jury forepersons. Relying on *Castaneda v. Partida*, 430 U.S. 482, 97 S.Ct. 1272 (1977), the California Court of Appeals affirmed Chin's conviction.

On the basis of the factual record before the California Superior Court, the California Court of Appeals' decision was not an unreasonable determination of

the facts or an unreasonable application of *Castaneda v. Partida*. We therefore  
AFFIRM the denial of Chin's petition for writ of habeas corpus.